

STATE OF MICHIGAN
COURT OF APPEALS

In re TTO, Minor.

UNPUBLISHED
March 21, 2019

No. 345598
Saginaw Circuit Court
Family Division
LC No. 16-034983-NA

Before: STEPHENS, P.J., and GLEICHER and BOONSTRA, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court’s order terminating his parental rights to his minor child, TO,¹ under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist); (g) (failure to provide proper care or custody); and (j) (reasonable likelihood of harm if returned to parent).² We affirm.

I. PERTINENT FACTS

In August 2016, the Department of Health and Human Services (DHHS) filed a petition requesting TO’s removal from respondent-mother’s care. The allegations were that respondent-mother was arrested in July 2016, remained incarcerated by the Saginaw Township Police, and was unable to provide a proper care plan for TO. Additionally the petition alleged that, prior to respondent-mother’s incarceration, she and the children were homeless. Respondent-mother’s incarceration stemmed from a domestic dispute with respondent-father in which she tried to run him over with a car. Respondent-father was also arrested and incarcerated in July 2016 as a result of the altercation with respondent-mother. However, his identity as TO’s father was

¹ In order to protect the child’s privacy, we do not identify him by name in the caption or body of this opinion.

² The same order also terminated the parental rights of respondent-mother; however, she is not a party to this appeal.

unknown to the trial court until June 2017. Respondent-mother specifically denied knowing who was TO's father. On July 10, 2017, respondent-father entered an admission plea to allegations that he was TO's father by virtue of an Affidavit of Parentage and that he was incarcerated and scheduled for trial on several criminal charges. Respondent-father also admitted that he did not provide proper care and custody for TO.

On July 26, 2017, respondent-father entered into a parent-agency agreement, which identified domestic violence, parenting skills, and domestic relations as his areas of need. The agreement further identified that respondent-father would need to establish housing, employment, and transportation upon his release. In regards to substance abuse, the agreement indicated that respondent-father did not have access to substances while incarcerated, but based on his prior 2013 arrest for possession of crack cocaine there could be a need to address substance abuse. Respondent-father was also ordered to "communicate regularly with his son through letters" and was provided with stamped envelopes in order to do so.

In November 2017, the trial court changed the permanency goal to adoption because respondent-mother had repeatedly failed to follow the parent-agency agreement, and respondent-father was "soon to be in the prison system for a minimum of two years" and had not provided a plan for TO's care. At that time, a paternal relative offered to take guardianship over TO; however, that never occurred. At another time, respondent-father proposed placement of TO with his significant other, but this plan never came to fruition because respondent-father's significant other never returned the required documents to begin the process of becoming a licensed foster care provider. By the time of the termination hearing in August 2018, respondent-father had been released from the St. Louis Correctional Facility in July 2018, but was incarcerated in the Saginaw County Jail with a sentence of an additional year.

Following the two-day termination hearing, the trial court issued an oral opinion and written order terminating respondent's parental rights.

II. STATUTORY GROUNDS AND REASONABLE EFFORTS

Respondent-father argues that the trial court erred in finding by clear and convincing evidence that petitioner had proven one or more statutory grounds. We disagree.

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). The trial court's finding that a ground for termination has been established is reviewed for clear error. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009) (opinion by CORRIGAN, J.). Additionally, the issue of whether petitioner made reasonable efforts to preserve and reunify the family is reviewed for clear error. See *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). "Appellate courts are obliged to defer to a trial court's factual findings at termination proceedings if those findings do not constitute clear error." *Rood*, 483 Mich at 90.

The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g),³ and (j), which provide in relevant part:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds . . . the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, although, in the court's discretion, financially able to do so, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Termination of parental rights is proper under MCL 712A.19b(3)(c)(i) when "the totality of the evidence amply supports that [the parent] had not accomplished any meaningful change in the conditions" that led to the court taking jurisdiction over the minor, *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009), and "there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age," MCL 712A.19b(3)(c)(i).

In this case, the initial dispositional hearing following respondent-father's admission plea was on July 26, 2017, and the initial disposition order was entered the same day. The termination hearings were held on July 11, 2018, and August 1, 2018, thereby satisfying the requirement that 182 or more days elapsed since the issuance of the initial dispositional order. MCL 712A.19b(3)(c). Respondent-father's areas of needs were identified as domestic violence, parenting skills, and domestic relations. Specifically, the parent-agency treatment agreement identified that respondent-father would be provided with literature on relationships, parenting,

³ MCL 712A.19b(3)(g) was substantively amended, effective June 12, 2018. See 2018 PA 58.

and domestic violence for him to read and learn during his incarceration; respondent-father would participate in domestic violence or individual counseling services upon his release to address domestic violence and emotional stability behavior; and respondent-father would also need to establish housing, employment, and transportation upon his release. Respondent-father would also be provided access to TO via letters. As it pertains to substance abuse, the agreement indicated that there could be a need to address this based on his prior 2013 arrest for possession of crack cocaine.

At the time of the termination hearing in August, respondent-father testified that he had been released from St. Louis Correctional Facility in July 2018, but had been moved to the Saginaw County Jail for another year. While imprisoned, respondent-father began a family reunification program but didn't get his certificate of completion because he missed two sessions when he was sick and in court. We agree that this failure to complete the program is not attributable to any fault on respondent's part. However, he failed to participate in, and was dismissed from, the prison recommended substance abuse program, and denied that he needed services for domestic abuse. Moreover, respondent-father had no care plan for TO and was not providing support for TO. In the more than two years since his incarceration, and more than one year since he executed an Affidavit of Parentage, respondent-father failed to accomplish any meaningful change in the conditions that led to the court taking jurisdiction over TO. *Williams*, 286 Mich App at 272.

Respondent-father also argues that petitioner failed to make reasonable efforts towards reunification. We disagree.

Petitioner had an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights. MCL 712A.18f(3)(b) and (c); MCL 712A.19a(2). Our Supreme Court has explained that “[r]easonable efforts to reunify the child and the family must be made in *all* cases’ except those involving aggravated circumstances” *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010), quoting MCL 712A.19a(2). Petitioner is not relieved of the statutory duty to make reasonable efforts with respect to an incarcerated parent. *Id.* at 159. In these cases, consideration of an incarcerated parent’s suggestions for placement is critical, as “[t]he mere present inability to personally care for one’s children as a result of incarceration does not constitute grounds for termination [A]lthough the parent is in prison[,] he need not *personally* care for the child.” *Id.* at 160-161. “[A trial] court is not required to terminate parental rights if the State has not provided to the family of the child . . . such services as the State deems necessary for the safe return of the child to the child’s home.” *Rood*, 483 Mich at 104. In other words, “[t]he adequacy of the petitioner’s efforts to provide services may bear on whether there is sufficient evidence to terminate a parent’s rights.” *Id.* at 89.

Respondent-father first argues that he lacked the opportunity to participate in all the hearings and begin services at the time of TO’s removal in August 2016. However, during the first preliminary hearing on August 5, 2016 respondent-mother indicated she had no idea who fathered TO because she “was having fun back then.” She then continued to deny knowing who the father of TO was for the next ten months despite the fact both she and respondent-father testified at the termination hearings that he had resided with TO and respondent-mother from 2012-2015 and provided emotional and financial support to TO until he was incarcerated.

The trial court only became aware of respondent-father's identity as TO's father after he signed an Affidavit of Parentage in June 2017. At that time, the trial court explained that while jurisdiction over TO had already been obtained through respondent-mother, respondent-father would still be entitled to and scheduled for trial, and a parent-agency treatment agreement was put into place after respondent-father admitted that he was incarcerated and unable to provide care for TO.

Respondent-father now contends that he should be given additional time to participate in and benefit from services as a result of this absence. However, this argument is unavailing because respondent-father's absence from the proceedings was not caused by petitioner, but rather by respondent-father's own decision not to be identified as TO's legal father until such a late date. When asked why it took so long for him to sign the Affidavit of Parentage, respondent-father responded, "[I]t's [sic] finesse tactic, child support I guess, I don't know—you know, I mean—in case I don't know she try and get any kind of benefits, stuff like that." Petitioner showed reasonable efforts by inquiring of respondent-mother about respondent-father's identity and publishing notice of the hearing. Moreover, as discussed above, more than 182 days elapsed between respondent-father's disposition and the termination hearings without any meaningful change, and respondent-father offers no indication of how his presence during the initial 10-month period would have changed these circumstances.

Respondent-father also argues that despite instituting a parent-agency agreement, petitioner left him to his own devices on every goal, failed to provide him any services, and created goals that were intended to be completed only after incarceration. He also argues that he completed the parent-agency agreement by having both housing and employment arranged upon his release.

The record shows that the foster care worker provided respondent-father with literature on parenting, relationship building, and discipline while he was incarcerated. Further, respondent-father's imprisonment facility offered 16 programs in which respondent-father could participate. While the foster care worker could not refer respondent-father to the programs, because the referral process was internal within the prison, he could have voluntarily signed up for some programs. A list of these 16 programs was provided to respondent-father by the foster care worker. He was informed by the trial court that it was up to him to take the initiative to sign up for any programs he was eligible for due to the internal referral process within the prison. The only testimony regarding respondent-father's program participation at St. Louis was that he failed to participate in the substance abuse program and was involuntarily dismissed from it. Despite having signed an agreement to the contrary, he denied any need for domestic violence programming.

Services were available to respondent, and at least some goals could have been achieved during his incarceration. Despite these opportunities, respondent-father failed to show that he accomplished any meaningful change in the conditions that led to the court taking jurisdiction over TO. *Williams*, 286 Mich App at 272.

Additionally, although respondent-father testified that he had housing and employment available upon his release, as noted by the L-GAL, there was no evidence presented by him to support these statements. The court did not err in finding that he failed to comply with the

parent-agency treatment plan regarding housing and employment. We also note that respondent-father had five additional children, was a legal father to three of them none of whom he supported.

Given these circumstances, the trial court did not err by determining that there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering TO's age. MCL 712A.19b(3)(c)(i).⁴

III. BEST INTERESTS

Respondent-father also argues that the trial court clearly erred in determining that termination of his parental rights was in TO's best interests. We disagree.

This Court reviews the trial court's determination of best interests for clear error. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *BZ*, 264 Mich App at 296-297. "Appellate courts are obliged to defer to a trial court's factual findings at termination proceedings if those findings do not constitute clear error." *Rood*, 483 Mich at 90.

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *Olive/Metts*, 297 Mich App at 40. When considering best interests, the focus is on the child, not the parent. *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *Id.* at 90.

"The trial court should weigh all the evidence available to determine the child's best interests." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The trial court may consider such factors as "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *Olive/Metts*, 297 Mich App at 41-42 (citations omitted). Other factors that the trial court may consider include "the child's wellbeing while in care, and the possibility of adoption." *White*, 303 Mich App at 714.

Respondent-father argues that the trial court erred when it found by a preponderance of the evidence that termination of his parental rights was in TO's best interests because he shared a bond with TO before his incarceration and continued that bond by writing letters and placing phone calls to TO during his incarceration. Among "a variety of factors," the strength of the bond between the child and the parent is only one factor for the court to consider. See *White*, 303 Mich App at 714.

⁴ Because termination was appropriately granted under MCL 712A.19b(3)(c)(i), we need not address the additional grounds. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

In this case, the trial court noted that it found respondent-father's testimony "disingenuous" because of a number of inconsistencies, including whether or not respondent-father was providing support for TO before his incarceration. Specifically, the trial court noted that contrary to respondent-father's assertion that he saw and provided support for TO "every day" before his arrest, respondent-mother and TO were homeless before removal. Further, the foster care worker could not confirm respondent-father's last face-to-face contact with TO because respondent-father had been incarcerated since August 2016, and he had remained in jail and in the St. Louis Correctional Facility since that day. Moreover, the foster care worker indicated that she did not see a bond between respondent-father and TO. Although respondent-father was affectionate during phone calls and his letters were appropriate and loving, TO always asked about his mother but did not ask about respondent-father. Based on the testimony presented, the trial court found that there was very limited contact between respondent-father and TO and if there was a bond, it was minimal. Over the course of 13 months, respondent-father wrote TO only four or five letters and spoke to him by phone only six times. Accordingly, the trial court did not err when it concluded that respondent-father had "no appreciable bond with his son" and "could have done much more from prison to try to develop a bond with his son by at least writing letters frequently and regularly."

Respondent-father also argues that petitioner did not demonstrate a strong bond between TO and his foster parents. However, the foster care worker testified that TO had bonded with his foster parents, with whom he had been placed since August 4, 2016, and it was "the only stable home" he'd known. The L-GAL repeatedly reported that TO was well placed, his needs were being met, and he had frequent contact with his sibling who was placed with a relative of TO's foster family. Based on these reports, the trial court concluded that TO was bonded to his foster parents, and there were "advantages to the foster care placement."

Respondent argues that it was against TO's best interest to not give respondent more time to work toward reunification. He bases this argument on the facts that TO was medicated due to acting out in school, was having difficulty sleeping and in crises due to the then potential termination of his mother's parental rights. He attempts to link TO's behavioral problems to his foster parents as caregivers. In doing so, he fails to consider that they may have been caused by the trauma of losing both parents to incarceration and the very need for placement created by respondent-father's actions. Further, there is no indication that TO's need for medication was based on anything other than his ADHD. Moreover, the foster care worker opined that TO needed permanence and stability, and the foster parents were willing to provide that permanency through adoption. In contrast, respondent-father did not provide support or care for TO. A review of the record supports the trial court's conclusions that TO was in a safe and stable home with foster parents who were willing to provide him permanency, that these factors weighed in favor of termination of respondent-father's parental rights, and that whatever bond existed between respondent-father and TO was outweighed by his needs for permanency and stability. Accordingly, the trial court did not clearly err in finding that termination of respondent-father's parental rights was in TO's best interests.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Elizabeth L. Gleicher

/s/ Mark T. Boonstra